



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2015

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Earlier this week, we discussed the Telephone Consumer Protection Act (TCPA) during the Subcommittee on Communications and Technology hearing entitled "Continued Oversight of the Federal Communications Commission." I wanted to take this opportunity to provide clarity about the applicability of that statute to congressional tele-town hall calls, which was of particular interest to the Subcommittee.

As is more fully discussed in the enclosed document containing Frequently Asked Questions concerning this issue, the Commission's June 2015 Omnibus Declaratory Ruling and Order does not impose any new restrictions on tele-town halls or congressional outreach to constituents. Use of these services should present no issue, provided that third party vendors for tele-town halls continue to follow long-established rules. For your convenience, enclosed is the document containing Frequently Asked Questions, which has also been posted on the Commission's website.

Please let me know if I can be of any further assistance.

Sincerely,

Tom Wheeler

cc: The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

Enclosure

FAQs – Tele-Town Halls

Summary: The Commission's recent robocall actions did not impose new restrictions on tele-town halls or congressional outreach to constituents. Since the early 1990s, informational calls to residential landline phones have been permitted without restriction, while such calls to mobile phones have required consumer consent. As long as vendors for tele-town halls continue to adhere to the decades-old rules, use of these services should pose no issue.

Q: Are robocalls for the purpose of obtaining constituent participation in tele-town halls illegal under the Telephone Consumer Protection Act (TCPA)?

A: No, but they may require consent in some cases. Robocalls to constituents for participation in tele-town halls are informational and not telemarketing. Because these robocalls are not telemarketing, they can be made to a constituent's residential landline phone without obtaining consent prior to initiating the call. If these robocalls are made to a constituent's wireless (i.e. mobile/cellular) phone, the robocalls require the consumer's prior consent. Nothing in the FCC's recent Robocalls Declaratory Ruling and Order changed that; these are longstanding TCPA and FCC requirements and we understand that third party vendors who help organize tele-town halls have compliance plans in place.

Q: Why is there a distinction between residential landline phones and wireless phones?

The TCPA statutory language makes this distinction, most likely in recognition of the cost of calls to wireless phones when the TCPA was enacted, and the arguably greater privacy intrusion.

Q: Doesn't the TCPA exempt political or elected officials' calls?

A: No. The TCPA addresses two categories of calls: telemarketing and informational but not political or elected officials' calls specifically. Because calls such as congressional tele-town hall calls are a subset of informational calls, the TCPA requirements for informational calls apply. That means that no consent is required for tele-town hall calls to constituents' residential landline phones, but prior consent is required for political robocalls to wireless phones.

Q: How can a caller obtain the constituent's consent?

A: First, no consent is required for tele-town hall robocalls when made to a constituent's residential landline phone. For calls to wireless numbers, consent is relatively easy to obtain. It can be either written or oral, can be obtained online, on a (non-robocall) call, or any other reasonable means. An individual can give their consent when signing up to receive campaign or Congressional Member materials; the more explicit the materials are that the individual may receive robocalls related to the tele-town halls, the better.

Q: Who is required to obtain a constituent's consent to call a wireless phone, a third-party caller or a Member of Congress?

A: For informational calls like tele-town hall calls, consent can be oral or written and should inform the individual that they may receive these types of robocalls. Generally, the entity making the call should obtain the constituent's consent, but if the Member obtained consent and the third party is making the call, that satisfies the consent requirement if the third party plays a minimal role in deciding who is called, what's said on the call, the call's timing, among other things.

Q: What kinds of calls require the consent of the called party?

A: For informational calls like tele-town hall calls, no consent is required for calls to residential landline phones. If the call is made to a wireless phone and is a robocall (i.e., is made using an autodialer, leaves a prerecorded message, or leaves an artificial voice message), consent is required.

Q: How can I make sure I'm not violating the TCPA?

A: First, nothing in the Commission's recent order changes the robocalls requirements for tele-town halls. Second, the easiest way to comply is to obtain consent for any calls to wireless phones. We have heard from third parties who have compliance plans in place to ensure that you can identify wireless numbers before making a call and can thus ensure you have consent when you need it.